IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12776 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARABHAI ELECTRONICS LTD

Versus

UNION OF INDIA

Appearance:
MR MIHIR H JOSHI for Petitioner
MR MUKESH R SHAH for Respondents

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE N.G.NANDI

Date of decision: 04/07/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

Rule. Mr.Mukesh R.Shah waives the service of Rule on behalf of the respondents.

This Special Civil Application is directed against the order dated 29th Jan.1999 passed by the Assistant Commissioner of Central Excise and Customs, Div.III, at Vadodara and the order dated 9th Oct.2000 passed by the Commissioner of Central Excise and Customs (Appeals), at Vadodara.

It is the common case of the parties that so far as the amount of penalty is concerned, the same has been paid back to the petitioner as pre-deposit. The only dispute which now remains is about the amount which was against the duty as pre-deposit. Learned Counsel for the petitioner has placed reliance on the Trade Notice No.44/2000 dated 19th June 2000 vide F.No.V-30(75)/T4/2000/M-IV. Mr.Joshi has also submitted that as per the Supreme Court judgment, no refund applications are required to be made now.

Having heard learned Counsel for both the sides, we are satisfied that so far as the refund of the amount of the duty of pre-deposit is concerned, the ground of unjust enrichment is not applicable and therefore, even the amount of pre-deposit duty has to be paid without any formal application and the case of the petitioner is covered by the Trade Notice No.44/2000 dated 19th June 2000 a copy of which has been enclosed as Annexure.F with the petition.

Accordingly the impugned orders at Annexure.D and Annexure.E dated 29th Jan.1999 and 9th Oct.2000 are hereby quashed and set aside and the respondents are directed to return the amount of pre-deposit duty due to the petitioner along with the due amount of interest if any, in accordance with law. This Special Civil Application is allowed. Rule is made absolute. No order as to costs.

4th July 2001 (M.R. Calla, J.)

(N.G. Nandi, J.)

Sreeram.